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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,052	04/16/2004	William Ashley Gouthro	0503.ash	7227

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SVEN W. HANSON
PO BOX 357429
GAINSVILLE, FL 32635-7429

EXAMINER

LEWIN, ALLANA

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,052	Applicant(s) GOUTHRO, WILLIAM ASHLEY	
	Examiner Allana Lewin	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8, 11 and 12 is/are allowed.
- 6) ☒ Claim(s) 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Givler et al. (US Pat. No. 6,945,945) in view of Estwanik (US Pat. No. 6,013,044).

3. Givler substantially discloses the claimed invention comprising a conformable grip configured to accept a human hand formed in a fist (note Figure 3), flat elongated flexible medial and lateral straps extending from the grip and having proximal ends (20 and 20'), a hand piece (28) which comprehends Applicant's 'clench strap', a means for connecting a distant resistance device to the proximal ends of the straps provided by adjustment straps and buckles (16 and 18) which would allow for a resistance force at the proximal ends of the medial and lateral straps, and a means for applying resistance force to the grip and medial and lateral sides of the middle of the user's forearm provided by any movement of the user's arm being resisted and therefore supported by the device, and specifically an elbow piece (22) and a wrist cross (26) applying resistance or support in respective proportions dependent on the angle of the user's forearm to the applied resistance force when the user's fist is accepted in the grip. The resistance force and its application is inherently provided by the structure of the device as movement of the user's arm is resisted by the elbow piece and the wrist cross in

order to provide appropriate and adequate support to the user's arm, and depending on the positioning of the user's arm when moved or raised at a certain angle the force is inherently applied in certain proportions.

4. Givler fails to teach the hand piece or clench strap as being flexible, but does disclose the hand piece as being contoured and accommodating for a user's hand.

5. Estwanik discloses a stabilization device comprising a conformable grip, medial and lateral straps, and a flexible clench strap (see proximate lead line 48) within the grip and extending between the straps.

6. Based on the teaching of Estwanik, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a flexible clench strap in the Givler device in order to make the hand piece/clench strap more contoured and therefore accommodating for the user's hand.

Allowable Subject Matter

7. Claims 1-8, 11 and 12 are allowed.

Response to Arguments

8. Applicant's arguments filed May 2nd, 2006 have been fully considered but they are not persuasive. In response to Applicant's arguments with respect to claim 10, it is the Examiner's position that Givler and Estwanik teach all of the positive structural limitations recited in the claim and is therefore fully capable of being used as a physical training device. The structure of the Givler device inherently provides resistance in

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respective proportions due to the elbow piece and the wrist cross, and therefore Applicant has failed to recite the claim in such a way as to patentably distinguish over Givler. The wrist cross and the elbow piece resist the movement of a user's arm, and specifically their forearm, in order to provide adequate support for the user. It is felt that the prior art would provide the function of applying a resistive force that would be in respective proportions due to the straps crossing at the wrist (26) when the user's forearm is twisted. As the forearm is twisted, forces in the strap would increase thereby applying increased resistive forces to the grip and medial and lateral sides of the forearm. It is not clear how this new language has defined over the prior art. Examiner repeats sentiments expressed in an interview summary dated April 21st, 2006 stating that structural rather than functional recitations carry greater patentable weight and serve to better distinguish over the prior art. Applicant has failed to claim sufficient structure or provide adequate structure in the claim that clearly and patentably distinguishes over the prior art of record.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday-Friday, 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AL 
June 27th, 2006


Danton D. DeMille
Primary Examiner